

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ROBERTO DURAND,

Plaintiff

v.

K. HAYMAN,

Defendant

Case No. 3:21-cv-00478-MMD-WGC

ORDER

I. DISCUSSION

On November 8, 2021, Plaintiff, an inmate in the custody of the Nevada Department of Corrections ("NDOC"), submitted a civil rights complaint under 42 U.S.C. § 1983 and filed an application to proceed *in forma pauperis*. (ECF Nos. 1-1, 1). Plaintiff's application to proceed *in forma pauperis* is incomplete. Plaintiff has not submitted an inmate account statement for the previous six-month period with his application. Plaintiff is advised that a financial certificate and an inmate account statement for the previous six-month period are two separate items. Plaintiff has provided the required financial certificate, but he has not provided the required inmate account statement (reflecting opening and closing balances) for the previous six-month period.

Under 28 U.S.C. § 1915(a)(2) and Local Rule LSR 1-2, an inmate seeking to begin a civil action in this Court may apply to proceed *in forma pauperis* in order to file the civil action without prepaying the full \$402 filing fee. To apply for *in forma pauperis* status, the inmate must submit all three of the following documents to the Court:

- (1) a completed **Application to Proceed in Forma Pauperis for Inmate**, this Court's approved form (i.e. pages 1 through 3 with the inmate's two signatures on page 3),
- (2) a **Financial Certificate** properly signed by both the inmate and a prison or jail official (i.e. page 4 of this Court's approved form), and
- (3) a copy of the **inmate's prison or jail trust fund account statement for the**

1 previous six-month period.

2 Accordingly, the Court denies Plaintiff's application to proceed *in forma pauperis*
3 (ECF No. 1) without prejudice because the application is incomplete. The Court will grant
4 Plaintiff a one-time extension to file a fully complete application to proceed *in forma*
5 *pauperis* containing all three of the required documents. Plaintiff will file a fully complete
6 application to proceed *in forma pauperis* on or before **January 10, 2022**. Absent unusual
7 circumstances, the Court will not grant any further extensions of time. If Plaintiff does not
8 file a fully complete application to proceed *in forma pauperis* with all three required
9 documents on or before **January 10, 2022**, this case will be subject to dismissal without
10 prejudice for Plaintiff to file a new case with the Court when Plaintiff is able to acquire all
11 three of the documents needed to file a fully complete application to proceed *in forma*
12 *pauperis* or pays the full \$402 filing fee.

13 A dismissal without prejudice means Plaintiff does not give up the right to refile the
14 case with the Court, under a new case number, when Plaintiff has all three documents
15 needed to submit with the application to proceed *in forma pauperis*. Alternatively, Plaintiff
16 may choose not to file an application to proceed *in forma pauperis* and instead pay the
17 full filing fee of \$402 on or before **January 10, 2022** to proceed with this case.

18 The Court will retain Plaintiff's civil rights complaint (ECF No. 1-1) but the Court
19 will not file the complaint unless and until Plaintiff timely files a fully complete application
20 to proceed *in forma pauperis* with all three documents or pays the full \$402 filing fee.

21 **II. CONCLUSION**

22 For the foregoing reasons, IT IS ORDERED that Plaintiff's application to proceed
23 *in forma pauperis* (ECF No. 1) is denied without prejudice to file a new fully complete
24 application to proceed *in forma pauperis* with all three documents.

25 IT IS FURTHER ORDERED that the Clerk of the Court will send Plaintiff the
26 approved form application to proceed *in forma pauperis* by an inmate, as well as the
27 document entitled information and instructions for filing an *in forma pauperis* application.

28 IT IS FURTHER ORDERED that on or before **January 10, 2022**, Plaintiff will either

1 pay the full \$402 filing fee for a civil action (which includes the \$350 filing fee and the \$52
2 administrative fee) or file with the Court:

3 (1) a completed **Application to Proceed in Forma Pauperis for Inmate** on this
4 Court's approved form (i.e. pages 1 through 3 of the form with the inmate's two
5 signatures on page 3),

6 (2) a **Financial Certificate** properly signed by both the inmate and a prison or jail
7 official (i.e. page 4 of this Court's approved form), and

8 (3) a copy of the **inmate's prison or jail trust fund account statement for the**
9 **previous six-month period.**

10 IT IS FURTHER ORDERED that, if Plaintiff does not file a fully complete
11 application to proceed *in forma pauperis* with all three documents or pay the full \$402
12 filing fee for a civil action on or before **January 10, 2022**, this case will be subject to
13 dismissal without prejudice for Plaintiff to refile the case with the Court, under a new case
14 number, when Plaintiff has all three documents needed to file a complete application to
15 proceed *in forma pauperis* or pays the the full \$402 filing fee.

16 IT IS FURTHER ORDERED that the Clerk of the Court will retain the complaint
17 (ECF No. 1-1) but will not file it at this time.

18 DATED: November 10, 2021

19 
20 UNITED STATES MAGISTRATE JUDGE